Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 302 of 2010
(Arising out of OIA-405-406/2009-AHD-II-CE/CMC/COMMR-A-/AHD/S/86-87-A-II-/09Dated- 16/11/2009 passed by Commissioner of Central Excise, AHMEDABAD-II)

Transformers and Rectifiers (India) Limited ....Appellant
SURVEY NO. 344-350, OPP. PWD STORES,
SARKHEJ-BAVLA HIGHWAY, VILLAGE-CHANGODAR,
TALUKA-SANAND, AHMEDABAD-GUJARAT

VERSUS

C.C.E. Ahmedabad-ii ....Respondent
CUSTOM HOUSE... FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

AND

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APPEARANCE:
Shri. Dhaval Shah, Advocate for the Appellant
Shri R.K. Bhashkar, Authorised Representative for the Respondent

CORAM: HON’BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON’BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 12301-12302 /2021

DATE OF HEARING:02.08.2021
DATE OF DECISION:11.08.2021

RAJU

These appeals have been filed by M/s Transformers & Rectifiers (India) Limited against demand of Central Excise duty, interest and imposition of penalty.

2. Learned Counsel pointed out that the appellants are engaged in manufacture of Transformers. The appellant entered into contracts with various buyers for supply of transformer. The said contracts also contains

a pre-determine price as the cost of transportation and delivery of goods to the buyers premises. The actual cost of transport is not exactly the same as that mentioned in the contract. There is a difference between the price of transportation contracted and actual cost of transportation/ delivery. The Revenue has identified the instances where the actual cost of transportation is less than the cost of transportation contracted by the appellant with the buyer. Revenue has sought to include in the assessable value the said excess of freight collected over the actual freight.

2.1 Learned Counsel pointed out that the issue is covered by various decisions of courts. He particularly relied on the decision of Hon'ble Apex Court of Accurate Meters Limited 2009 (235) ELT 581. He also relied on the decision of Tribunal in the case of Ashok Transformers Private Limited reported at 2019 (11) TMI 831, wherein under similar circumstances relief was granted.

3. Learned Authorized Representative relies on the impugned order.

4. We have considered the rival submissions. We find that the dispute essentially relates to includability in assessable value of freight collected in excess to the actual amount spent. We noticed that in the instant case, it is a fact that the price of transportation contracted is not always in excess of the actual amount spent on transportation. Sometimes it is less and other times it is more. However, the demand has been raised by selecting entries where the amount collected is higher than the actual amount spent. We noticed that Hon'ble Apex Court in case of Accurate Meters Limited, inter alia examined similar facts and observed as under:

> ***"12.** We have noticed hereinbefore that there were two separate contracts; one for sale of Electricity Meters which was governed by the provisions of the Sale of Goods Act, and the other governing transportation of the goods. The charges for transportation of the goods were not on actual basis. Respondent was bound to transport the goods from the factory gate to the place of the State Electricity Boards at the rates specified in the tender. Prior thereto, the State Electricity Board Authorities were to make inspection of the goods.*

13. *In the case of Associated Strips Ltd. v. Commissioner of Central Excise, New Delhi reported in [2002 (143) E.L.T. 131], the Tribunal distinguishing its earlier decision in Commissioner v. Prabhat Zarda Factory Ltd. [2000 (119) E.L.T. 191, held :*

"18. In the case of Associated Strips Ltd. the goods manufactured are inspected by the representative of the buyer (Electricity Board) and thereafter the manufacturer had to mark the name of the buyer on the poles before they are handed over to the transporter. So also in the case of Mauria Udyog Ltd. the LPG cylinders manufactured by the appellant are inspected by the representatives of the oil companies. After getting test certificate from the Bureau of India Standards Cylinders are to be marked with the name of the oil companies before they are handed over to the transporter for the purpose of transmission to the buyer. In the light of the provisions contained in Section 23, it has to be taken that the goods are unconditionally appropriated to the contract when the above procedure was followed and goods handed over to the carrier thus passing on the property in the goods to the buyer.

19. We may also refer to the provision contained under Section 39 of the Sale of goods Act which refers to the legal effect of delivery of the goods to a carrier by the seller. It is provided that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is prima facie deemed to be a delivery of the goods to the buyer AIR 1966 Patna 346, admittedly, in the present case after appropriation of the good to the contract they were delivered to the carrier as per terms of the contract. Therefore, delivery to the carrier has to be taken as delivery to buyer. Revenue has no case that the goods are not sent to the buyer through carrier. On the other hand, as mentioned earlier, the only contention raised is that since the insurance of the goods in transit. At this juncture we may point out that in the case of Mauria Udyog Ltd. there is no insurance taken by the seller."

14. *The said decision of the Tribunal has been approved by this Court in M/s. Escorts JCB Ltd. (supra), stating :*

"5. The contention is that the fact that the assessee arranged for the transit insurance would in no way lead to an inference that the ownership in the goods was retained by the assessee during the period of the transit until the delivery of the goods at the place of the buyer. The terms and conditions of the sale are clear that the sale is Ex-works at Ballabgarh, Haryana. The payment is to be made before despatch of the goods from the factory premises. The machinery, handed over to the carrier/transporter is as good as delivery to the buyer in terms of Section 39 of the Sale of Goods Act apart from terms and conditions of sale. Section 39 of the Sale of Goods Act reads as under :

39. Delivery to carrier or wharfinger :

(1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to wharfinger for sale custody, is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

> *(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails to do, the goods shall be deemed to be at his risk during such sea transit."*
>
> *The factual matrix involved in this case is squarely applicable to the ratio of the decisions in M/s. Associated Strips Ltd. (supra) as also M/s. Escorts JCB Ltd. (supra).*
>
> ***15.*** *In that view of the matter and for the reasons stated hereinbefore, we have no doubt in our mind that the authority in appeal as also the Tribunal were correct in their view that the amount claimed by way of transportation charges and insurance cannot be considered for determining the value of the electric meters supplied."*

5. We find that in the instant case too a perusal of the contracts produced before us shows that it contains separate clauses for the cost of goods sold and the cost of transportation. We also find that the representative contract produced by them in respect of Rajasthan Rajya Vidyut Prasaran Nigam Limited in para 5 thereof contains details of various tests to be conducted by the buyer. The tests include Stage Inspection, Routine Tests, Type Tests, Test for Nitrogen Inspection, Fire Prevention and Extinguishing System. The dispatch of goods is also subject to approval of buyer after testing. The dispatch instruction prescribes in para 7 of the contract prescribe the manner in which the dispatch clearance will be granted by the buyer. We find that the facts are similar to the case of Accurate Meters decided by Hon'ble Supreme Court. In similar case relief was also granted in the case of Ashok Transformers Pvt. Ltd. (supra). Consequently, relying on the aforesaid Hon'ble Apex Court decision, we set aside the impugned order and allow the appeals.

(Pronounced in the open court on 11.08.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha